

SBA Information Notice

TO: All SBA Employees

CONTROL NO.: 5000-1017

SUBJECT: Publication of Final Regulations
for Liquidation and Debt
Collection Activities

EFFECTIVE: 5/10/ 2007

On April 12, 2007 SBA published in the Federal Register final regulations addressing servicing, liquidation and guaranty purchase activities for 7(a) lenders and Certified Development Companies. These regulations were published as proposed rules on November 3, 2005 (70 FR 66800) with an initial comment period that ended on January 6, 2006. The comment period was later reopened and extended to February 24, 2006. A number of comments were received, as indicated in the “comment summary” to the final regulations, and the regulations were revised to address these comments. You may access the regulations at [\[TEXT\]](#) [\[PDF\]](#).

The final rule is not effective until May 14, 2007. Key provisions are:

1. The term “Loan Program Requirements” is defined to make clear what SBA directives 7(a) lenders and CDCs must comply with for their SBA loans. In this regard, see the definition of Loan Program Requirements in section 120.10, and also refer to section 120.180 in which the responsibilities of 7(a) lenders and CDCs for adherence to Loan Program Requirements are explained. Loan Program Requirements in effect when a 7(a) lender or CDC takes an action on a loan govern that specific action. Some provisions of the new regulations apply only to loans approved on or after May 14, 2007 as discussed below.
2. For loans approved on or after May 14, 2007, section 120.520(a) provides that all 7(a) lenders must liquidate business personal property securing a loan prior to requesting SBA to purchase the guaranteed portion of the loan. There is an exception to this requirement if the borrower files for bankruptcy.
3. Section 120.520(b) makes explicit that SBA will not process a guarantee purchase if the lender does not supply adequate documentation.
4. For secondary market loans that SBA purchases, section 120.520(c) requires lenders to submit loan status reports within 15 business days of SBA’s purchase of the guaranteed portion. Lenders are also required to submit sufficient documentation to enable SBA to conduct post-purchase reviews. A lender’s failure to do so may lead to a recovery action by SBA for the secondary market disbursement. Also, the lender’s future participation in the secondary market may be restricted.
5. Section 120.522 limits interest to 120 days on loans approved after May 14, 2007 that are purchased by SBA from the lender. This does not apply to secondary market purchases.

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SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete
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6. Section 120.536 standardizes across various loan programs the particular servicing/liquidation actions that require prior SBA approval, and reminds 7(a) lenders and CDCs to maintain in their loan files supporting documentation for actions taken in connection with a loan that do not require such approval. This documentation will be crucial to SBA's review of the lender's handling of a loan if it is submitted for guaranty purchase and to SBA's determination as to whether the lender's actions were prudent and commercially reasonable (see section 120.535 for an amplification of these standards).
7. Section 120.540 discusses when liquidation and litigation plans are required to be submitted to SBA. After May 14, 2007, only 7(a) loans made under a lender's authority as a CLP lender and CDCs must submit liquidation plans to SBA prior to initiating liquidation action. However, all 7(a) lenders and CDCs must obtain SBA's prior approval of a litigation plan before proceeding with any Non-Routine Litigation (see definition of Non-Routine Litigation in this section).
8. Section 120.546 addresses loan asset sales of both 7(a) and 504 loans. In this regard, SBA is currently exploring the feasibility of coordinating with the FDIC in conducting periodic loan sales.
 - a. For loans approved on or after May 14, 2007, if SBA purchases the guaranteed portion of a 7(a) loan from the secondary market, the lender is deemed to have consented to the sale of the whole loan (lender and SBA portion) in an asset sale conducted or overseen by SBA. However, the lender may submit a request within 15 business days of SBA's secondary market purchase requesting that the loan not be sold and explaining the reasons for the request. SBA may then decide, in its sole discretion, to delay the sale of the loan pending the completion of certain lender actions or to proceed with the sale of the loan. For loans approved prior to May 14, 2007, SBA must obtain the lender's consent to sell the loans.
 - b. Following the purchase by SBA of a non-secondary market 7(a) loan, SBA will not sell the loan until nine months from the date of the purchase if the lender has not completed its liquidation actions for the loan.
 - c. Subsequent to the purchase of a debenture, SBA may sell a PCLP 504 loan after providing at least 90 days notice to the CDC. For all other 504 loans after SBA's purchase of a debenture, SBA may sell the loan at any time. In neither situation is the CDC's approval needed for the sale.
9. Section 120.975 explains the authority of CDCs to conduct liquidation and debt collection litigation as an Authorized CDC Liquidator, subject to SBA's approval of a liquidation and/or litigation plan for a defaulted loan.
 - a. Under existing regulations, section 120.848(f), PCLP CDCs are required to liquidate and conduct debt collection litigation for loans approved under their PCLP authority. For all other loans in their portfolios, PCLP CDCs are considered to be Authorized CDC Liquidators if notified by SBA that either of two requirements are met for such designation: (1) the CDC has one or more employees with at least two years of acceptable liquidation experience who have completed a suitable liquidation training program, or (2) the CDC has entered into

a contract with a qualified third party contractor whose qualifications and contract terms have been approved by SBA.

- b. All other CDCs may apply to become an Authorized CDC Liquidator if the CDC meets the criteria set forth in subsection (b)(1) and (2). The application process is described in subsection (d).
- c. CDCs may receive compensation for their liquidation activities as explained in Section 120.542(c) of up to 10% of the realized net recovery proceeds from a loan up to a fee of \$25,000, and a lower percentage (not to exceed 5%) of the realized net recovery proceeds above such amount. Authorized compensation percentages will be published in the Federal Register. If the CDC uses an SBA-approved contractor to handle its liquidations, the contractor may be compensated at these same amounts. In addition, SBA will compensate CDCs for reasonable, customary and necessary out-of-pocket expenses incurred in liquidation activities.

If you have questions, please contact Walter Intlekofer in the Office of Financial Assistance (202-205-7543) or Bill Gery in the Office of General Counsel (202-401-2803).

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